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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,677	09/26/2003	Robert R. Bly	12873/04651	9805
24024	7590	01/25/2005	EXAMINER	
CALFEE HALTER & GRISWOLD, LLP			NGUYEN, TUAN N	
800 SUPERIOR AVENUE			ART UNIT	PAPER NUMBER
SUITE 1400				3751
CLEVELAND, OH 44114				

DATE MAILED: 01/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/672,677	BLY, ROBERT <i>GD</i>	
	Examiner Tuan N. Nguyen	Art Unit	3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 10 November 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-43 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-43 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date: _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see page 17, line 6 et seq., filed 11/10/04, with respect to the rejection(s) of claim(s) 1 under 35 U.S.C. 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of newly found prior art reference(s).

Claim Objections

2. Claims 2-9, 11-25 and 43 are objected to because of the following informalities: "A" in line 1 of claims 2-9, 11-18 and 20-25 should be --The--; "each side rail" in line 2 of claim 19 lack antecedent basis in the claim; "an rail" in line 10 of claim 19 should be --a rail--; and claim 43 should not be depended upon itself. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 19-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claim 19, it is unclear as to which "non-circular end portion" is being referred to by the limitation in line 13.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 19, 22 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Offner.

In regard to claim 19, Offner discloses a commode safety frame comprising a first and second side frames (10,10), each side frame comprising a frame main section having a non-circular end portion (18), and at least one opening (28,29) in a wall of the non-circular end portion; first and second attachment rails, each attachment rail (17,22) comprising a rail main section having a non-circular end portion (22), and at least one detent (ball 27 is considered as detent) retractably extending from a surface of the non-circular end portion; and the side frames removably coupled to the attachment rails, via screws 23, at a location comprising the non-circular portion of the side frame main section and the non-circular portion of the in rail main section.

In regard to claims 22 and 23, the non-circular end portions of the first and second side frames and the non-circular end portions of the first and second attachment rails have substantially square or rectangular cross-sections (see Fig. 3).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3751

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landsberger in view of at least one of the Pitts et al. (hereinafter Pitts), Dominguez, Conrad, Westrich, Fabius, De Bisschop et al., Spiegel, Emmerich, and Rogers references and further in view of Frank.

Landsberger discloses commode safety frame comprising first (32, 40) and second (34, 42) circular tube side frames; first (48) and second (50) circular tube rails in releasable communication with the first and second side frames, respectively. Landsberger discloses the side frames and the rails could be connected by any conventional connecting means (45, 47) (see col. 4, line 45 et seq.).

Pitts discloses a commode safety frame being manufactured out of either round tubing or square (non-circular) tubing without altering the basic concept of the invention (see col. 2, lines 22-27).

Dominguez discloses a commode safety frame comprising arms (14,15) that can be square tubing having a rounded tube in a portion adapted to be pivotally mounted in a sleeve on the base support means (12) or can be cylindrical as shown in the figures (see col. 2, lines 32-38). Therefore, Dominguez clearly demonstrates a tubular frame can transition from a circular portion to a non-circular portion if the user desires it to be.

The conventional connecting means discussed above by Landsberger could obviously be the following conventional connecting means:

- Conrad discloses non-circular adjustable connection means at the legs (see Fig. 7);
- Westrich discloses a circular tube portion transition to a non-circular tube portion that act as a connection means (see Fig. 4 and 5, which can be considered as oval shape);
- Fabius discloses different non-circular shaped connection means, which appears to be oval and triangular;
- De Bisschop et al. discloses another non-circular connection means, which appears to be triangular shape;
- Spiegel discloses a connection means at the legs with a biased pin/detent, as claimed, protruding from a wall of an inner tubular member through a hole of an outer tube so as to allow adjustability of the height of the frame.
- Emmerich discloses a circular tube portion (70,82) transition to a non-circular tube portion (76,86) that act as a connection means (see Fig. 1);
- Rogers discloses another non-circular adjustable connection means;

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ any of the above conventional connection means on the Landsberger safety frame as suggested by Landsberger (see col. 4, line 45 et seq.). In doing so, the resulting non-circular connection portion transition to a circular portion would not be out of the ordinary as discussed supra. The desired shape such as square, rectangular, oval, elliptical, or triangular cross-sections of the non-circular

connection means is obvious to one of ordinary skill in the art at the time the invention was made.

Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ, on the Landsberger safety frame, a safety bracket (32) having a mounting plate (30) as, for example, taught by Frank (see Fig. 3a) as an alternative equivalent to mount a toilet seat and/or lid.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan N. Nguyen whose telephone number is 571-272-4892. The examiner can normally be reached on Monday-Friday (10:00-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Tuan Nguyen
Primary Examiner
Art Unit 3751

TN

1/21/05